

Senate Bill No. 30

CHAPTER 566

An act to amend Section 7030 of, to add Sections 7159.4, 7159.5, 7159.6, 7159.10, 7159.11, 7159.12, 7159.13, and 7159.14 to, to repeal Section 7018.5 of, and to repeal and add Sections 7159 and 7159.3 of, the Business and Professions Code, and to amend Sections 1689.5, 1689.6, and 1689.7 of, to add Section 1689.15 to, and to repeal and add Section 1689.13 of, the Civil Code, relating to home improvement contracts.

[Approved by Governor September 17, 2004. Filed
with Secretary of State September 17, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

SB 30, Figueroa. Home improvement contracts.

Existing law defines a "home improvement contract" and requires home improvement contracts between contractors and homeowners or tenants to comply with specified requirements, and makes a violation of these provisions regarding home improvement contracts a crime. Existing law authorizes an individual to rescind a home improvement contract if certain conditions are met.

This bill would repeal these provisions and instead require that a home improvement contract and any changes made to that contract be in writing, be legible, be easy to understand, and inform a consumer of his or her right to cancel or rescind the contract. The bill would require that a home improvement contract contain various information, notices, and disclosures for the protection of the consumer. The bill would provide that a violation of these provisions subjects the home improvement contractor to discipline. The bill would define a "service and repair contract" and would enact various disclosure requirements applicable to this type of contract. The bill would provide that a violation of these provisions subjects the contractor to discipline. The bill would make conforming changes and revise and recast certain existing provisions regarding home improvement contracts and related matters.

The bill would become operative on July 1, 2005.

Because a violation of the bill would be a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 7018.5 of the Business and Professions Code is repealed.

SEC. 2. Section 7030 of the Business and Professions Code is amended to read:

7030. (a) Except for contractors writing home improvement contracts pursuant to Section 7151.2 and contractors writing service and repair contracts pursuant to Section 7159.10, every person licensed pursuant to this chapter shall include the following statement in at least 10-point type on all written contracts with respect to which the person is a prime contractor:

“Contractors are required by law to be licensed and regulated by the Contractors’ State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors’ State License Board, P.O. Box 26000, Sacramento, CA 95826.”

(b) Every person licensed pursuant to this chapter shall include the following statement in at least 12-point type in all home improvement contracts written pursuant to Section 7151.2 and service and repair contracts written pursuant to Section 7159.10:

“Information about the Contractors’ State License Board (CSLB): CSLB is the state consumer protection agency that licenses and regulates construction contractors.

Contact CSLB for information about the licensed contractor you are considering, including information about disclosable complaints, disciplinary actions and civil judgments that are reported to CSLB.

Use only licensed contractors. If you file a complaint against a licensed contractor within the legal deadline (usually four years), CSLB has authority to investigate the complaint. If you use an unlicensed contractor, CSLB may not be able to help you resolve your complaint. Your only remedy may be in civil court, and you may be liable for damages arising out of any injuries to the unlicensed contractor or the unlicensed contractor’s employees.

For more information:

Visit CSLB’s Web site at www.cslb.ca.gov



Call CSLB at 800-321-CSLB (2752)

Write CSLB at P.O. Box 26000, Sacramento, CA 95826.”

(c) Failure to comply with the notice requirements set forth in subdivision (a) or (b) of this section is cause for disciplinary action.

SEC. 3. Section 7159 of the Business and Professions Code is repealed.

SEC. 4. Section 7159 is added to the Business and Professions Code, to read:

7159. This section and Sections 7159.3 to 7159.6, inclusive, apply to all home improvement contracts, as defined in Section 7151.2, between a contractor, whether a general or a specialty contractor, who is licensed or subject to be licensed pursuant to this chapter with regard to the transaction and who contracts with an owner or tenant for home improvement work, except that this section and Sections 7159.3 to 7159.6, inclusive, do not apply to service and repair contracts as defined in Section 7159.10.

A violation of this section by a licensee or a person subject to be licensed under this chapter, or by his or her agent or salesperson, is cause for discipline.

(a) A home improvement contract and any changes to the contract shall be in writing and signed by the parties.

(b) The writing shall be legible.

(c) Any printed form shall be readable. Unless a larger typeface is specified in this article, text in any printed form shall be in at least 10-point typeface and the headings shall be in at least 10-point boldface type.

(d) Before any work is started, the contractor shall give the buyer a copy of the contract signed and dated by both the contractor and the buyer. The buyer’s receipt of the copy triggers the buyer’s rights under the Home Solicitation Act, if the right to cancel is applicable, provided that the contract complies with the Home Solicitation Act.

(e) A change-order form for changes or extra work shall be incorporated into the contract and shall become part of the contract if it is in writing and signed by the parties.

(f) Change orders required by the building department at the jobsite shall be considered incorporated into the contract without being signed by both the parties.

(g) The provisions of this section are not exclusive and do not relieve the contractor from compliance with any other applicable provision of law.

SEC. 5. Section 7159.3 of the Business and Professions Code is repealed.



SEC. 6. Section 7159.3 is added to the Business and Professions Code, to read:

7159.3. This section applies to all home improvement contracts, as defined in Section 7151.2, between an owner or tenant and a contractor, whether a general contractor or a specialty contractor, who is licensed or subject to be licensed pursuant to this chapter with regard to the transaction. Failure by the licensee, or a person subject to be licensed under this chapter, or by his or her agent or salesperson, to provide the following information, notices, and disclosures in the contract is cause for discipline:

(a) The name, business address, and license number of the contractor and the description of the license classification relevant to the project.

(b) The name and registration number of the home improvement salesperson, if any.

(c) A notice concerning commercial general liability insurance. This notice may be provided as an attachment to the contract if the contract includes the statement, "A notice concerning commercial general liability insurance is attached to this contract." The notice shall include the heading "Commercial General Liability Insurance (CGL)," followed by whichever of the following statements is both relevant and correct:

(1) "(The name on the license or 'This contractor') does not carry commercial general liability insurance."

(2) "(The name on the license or 'This contractor') carries commercial general liability insurance written by (the insurance company). You may call the (insurance company) at _____ to check the contractor's insurance coverage."

(3) "(The name on the license or 'This contractor') is self-insured."

(d) A notice concerning workers' compensation insurance. This notice may be provided as an attachment to the contract if the contract includes the statement "A notice concerning workers' compensation insurance is attached to this contract." The notice shall include the heading "Workers' Compensation Insurance" followed by whichever of the following statements is correct:

(1) "(The name on the license or 'This contractor') has no employees and is exempt from workers' compensation requirements."

(2) "(The name on the license or 'This contractor') carries workers' compensation insurance for all employees."

SEC. 7. Section 7159.4 is added to the Business and Professions Code, to read:

7159.4. This section applies to all home improvement contracts, as defined in Section 7151.2, between an owner or tenant and a contractor, whether a general contractor or a specialty contractor, who is licensed or

subject to be licensed pursuant to this chapter with regard to the transaction. Failure by the licensee, or a person subject to be licensed under this chapter, or by his or her agent or salesperson, to provide the following information, notices, and disclosures in the contract is cause for discipline:

(a) Notice of the type of contract in at least 10-point boldface type: “Home Improvement.”

(b) The notice in at least 12-point boldface type: “Notice to the Buyer: You are entitled to a completely filled in copy of this agreement, signed by both you and the contractor, before any work may be started.”

(c) The heading: “Contract Price,” followed by the amount of the contract in dollars and cents.

(d) If a finance charge will be charged, the heading: “Finance Charge” followed by the amount in dollars and cents. The finance charge is to be set out separately from the contract amount.

(e) The heading: “Description of the Project and Description of the Significant Materials to be Used and Equipment to be Installed,” followed by a description of the project and a description of the significant materials to be used and equipment to be installed.

(f) For swimming pools, in addition to the project description required under subdivision (e), a plan and scale drawing showing the shape, size, dimensions, and the construction and equipment specifications.

(g) If a down payment will be charged, the heading: “Down Payment” and a space where the actual down payment appears followed by the text in at least 12-point boldface type: “THE DOWNPAYMENT MAY NOT EXCEED \$1,000 OR 10 PERCENT OF THE CONTRACT PRICE, WHICHEVER IS LESS.”

(h) If any payment, besides the down payment, is to be made before the project is completed, the contract shall include a schedule with a heading labeled “Schedule of Progress Payments,” stated in dollars and cents and specifically referencing the amount of work or services to be performed and any materials and equipment to be supplied, and the following statement in at least 12-point boldface type:

“The schedule of progress payments must specifically describe each phase of work, including the type and amount of work or services scheduled to be supplied in each phase, along with the amount of each proposed progress payment. IT IS AGAINST THE LAW FOR A CONTRACTOR TO COLLECT PAYMENT FOR WORK NOT YET COMPLETED, OR FOR MATERIALS NOT YET DELIVERED. HOWEVER, A CONTRACTOR MAY REQUIRE A DOWNPAYMENT.”



(i) The heading: “Approximate Start Date” and “Approximate Completion Date,” each followed by the approximate dates for start and completion.

(j) If applicable, the heading, “List of Documents to be Incorporated into the Contract,” followed by the list of documents incorporated into the contract.

(k) The heading: “Note about Extra Work and Change Orders” followed by the following statement:

“Extra Work and Change Orders become part of the contract once the order is prepared in writing and signed by the parties. The order must describe the scope of the extra or change, the cost to be added or subtracted from the contract, and the effect the order will have on the schedule of progress payments. Change orders required by the building department at the jobsite shall be considered incorporated into the contract without being signed by both parties.”

(l) (1) Except when the contract is negotiated at the contractor’s place of business, the statement found in paragraph (4) of subdivision (a) of Section 1689.7 of the Civil Code for the three-day right to cancel or the statement found in paragraph (2) of subdivision (e) of Section 1689.7 for the seven-day right to cancel, whichever is relevant. A statement that complies with Section 1689.7 may be attached to the contract if the contract includes a checkbox and whichever statement is relevant in at least 12-point boldface type:

(A) “The law requires that the contractor give you a notice explaining your right to cancel. Initial the checkbox if the contractor has given you a ‘Notice of the Three-Day Right to Cancel.’ ”

(B) “The law requires that the contractor give you a notice explaining your right to cancel. Initial the checkbox if the contractor has given you a ‘Notice of the Seven-Day Right to Cancel.’ ”

(2) This subdivision does not apply to home improvement contracts entered into by a person who holds an alarm company operator’s license issued pursuant to Chapter 11.6 (commencing with Section 7590), provided the person complies with Sections 1689.5, 1689.6, and 1689.7 of the Civil Code, as applicable.

(m) The signatures of the contractor or the contractor’s representative, and the buyer.

(n) The date the contract was signed.

(o) A statement with the heading “Mechanics’ Lien Warning” as follows:

“MECHANICS LIEN WARNING:



Anyone who helps improve your property, but who is not paid, may record what is called a mechanics' lien on your property. A mechanics' lien is a claim, like a mortgage or home equity loan, made against your property and recorded with the county recorder.

Even if you pay your contractor in full, unpaid subcontractors, suppliers, and laborers who helped to improve your property may record mechanics' liens and sue you in court to foreclose the lien. If a court finds the lien is valid, you could be forced to pay twice or have a court officer sell your home to pay the lien. Liens can also affect your credit.

To preserve their right to record a lien, each subcontractor and material supplier must provide you with a document called a '20-day Preliminary Notice.' This notice is not a lien. The purpose of the notice is to let you know that the person who sends you the notice has the right to record a lien on your property if he or she is not paid.

BE CAREFUL. The Preliminary Notice can be sent up to 20 days after the subcontractor starts work or the supplier provides material. This can be a big problem if you pay your contractor before you have received the Preliminary Notices.

You will not get Preliminary Notices from your prime contractor or from laborers who work on your project. The law assumes that you already know they are improving your property.

PROTECT YOURSELF FROM LIENS. You can protect yourself from liens by getting a list from your contractor of all the subcontractors and material suppliers that work on your project. Find out from your contractor when these subcontractors started work and when these suppliers delivered goods or materials. Then wait 20 days, paying attention to the Preliminary Notices you receive.

PAY WITH JOINT CHECKS. One way to protect yourself is to pay with a joint check. When your contractor tells you it is time to pay for the work of a subcontractor or supplier who has provided you with a Preliminary Notice, write a joint check payable to both the contractor and the subcontractor or material supplier.

For other ways to prevent liens, visit CSLB's Web site at www.cslb.ca.gov or call CSLB at 800-321-CSLB (2752).

REMEMBER, IF YOU DO NOTHING, YOU RISK HAVING A LIEN PLACED ON YOUR HOME. This can mean that you may have to pay twice, or face the forced sale of your home to pay what you owe."

SEC. 8. Section 7159.5 is added to the Business and Professions Code, to read:



7159.5. This section applies to all home improvement contracts, as defined in Section 7151.2, between an owner or tenant and a contractor, whether a general contractor or a specialty contractor, who is licensed or subject to be licensed pursuant to this chapter with regard to the transaction.

(a) Failure by the licensee or a person subject to be licensed under this chapter, or by his or her agent or salesperson to comply with the following provisions is cause for discipline:

(1) The contract shall include the agreed contract amount in dollars and cents. The contract amount shall include the entire cost of the contract, including profit, labor, and materials, but excluding finance charges.

(2) If there is a separate finance charge between the contractor and the person contracting for home improvement, the finance charge shall be set out separately from the contract amount.

(3) If a down payment will be charged, the down payment may not exceed one thousand dollars (\$1,000) or 10 percent of the contract amount, whichever is less.

(4) If, in addition to a down payment, the contract provides for payments to be made prior to completion of the work, the contract shall include a schedule of payments in dollars and cents specifically referencing the amount of work or services to be performed and any materials and equipment to be supplied.

(5) Except for a down payment, the contractor may neither request nor accept payment that exceeds the value of the work performed or material delivered.

(6) Upon any payment by the person contracting for home improvement, and prior to any further payment being made, the contractor shall, if requested, obtain and furnish to the person a full and unconditional release from any potential lien claimant claim or mechanic's lien pursuant to Section 3114 of the Civil Code for any portion of the work for which payment has been made. The person contracting for home improvement may withhold all further payments until these releases are furnished.

(7) If the contract provides for a payment of a salesperson's commission out of the contract price, that payment shall be made on a pro rata basis in proportion to the schedule of payments made to the contractor by the disbursing party in accordance with paragraph (4).

(8) A contractor furnishing a performance and payment bond, lien and completion bond, or a bond equivalent or joint control approved by the registrar covering full performance and payment is exempt from paragraphs (3), (4), and (5), and need not include, as part of the contract, the Mechanics' Lien Warning found in subdivision (o) of Section



7159.4. A contractor furnishing these bonds, bond equivalents, or a joint control approved by the registrar may accept payment prior to completion. If the contract provides for a contractor to furnish joint control, the contractor shall not have any financial or other interest in the joint control.

(b) A violation of paragraph (1), (3), or (5) of subdivision (a) by a licensee or a person subject to be licensed under this chapter, or by his or her agent or salesperson, is a misdemeanor punishable by a fine of not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000), or by imprisonment in a county jail not exceeding one year, or by both fine and imprisonment.

(1) An indictment or information against a person who is not licensed but who is required to be licensed under this chapter shall be brought, or a criminal complaint filed, for a violation of this section within four years from the date the buyer signs the contract.

(2) An indictment or information against a person who is licensed under this chapter shall be brought, or a criminal complaint filed, for a violation of this section within two years from the date the buyer signs the contract.

(3) The limitations on actions in this subdivision shall not apply to any administrative action filed against a licensed contractor.

(c) Any person who violates this section as part of a plan or scheme to defraud an owner or tenant of a residential or nonresidential structure, including a mobilehome or manufactured home, in connection with the offer or performance of repairs to the structure for damage caused by a natural disaster, shall be ordered by the court to make full restitution to the victim based on the person's ability to pay, as defined in subdivision (e) of Section 1203.1b of the Penal Code. In addition to full restitution, and imprisonment authorized by this section, the court may impose a fine of not less than five hundred dollars (\$500) nor more than twenty-five thousand dollars (\$25,000), based upon the defendant's ability to pay. This subdivision applies to natural disasters for which a state of emergency is proclaimed by the Governor pursuant to Section 8625 of the Government Code, or for which an emergency or major disaster is declared by the President of the United States.

SEC. 9. Section 7159.6 is added to the Business and Professions Code, to read:

7159.6. (a) An extra work or change order is not enforceable against a buyer unless the change order sets forth all of the following:

- (1) The scope of work encompassed by the order.
- (2) The amount to be added or subtracted from the contract.
- (3) The effect the order will make in the progress payments or the completion date.



(b) The buyer may not require a contractor to perform extra or change-order work without providing written authorization.

(c) Failure to comply with the requirements of this section does not preclude the recovery of compensation for work performed based upon legal or equitable remedies designed to prevent unjust enrichment.

SEC. 10. Section 7159.10 is added to the Business and Professions Code, to read:

7159.10. (a) “Service and repair contract” means an agreement between a contractor or salesperson for a contractor, whether a general contractor or a specialty contractor, who is licensed or subject to be licensed pursuant to this chapter with regard to the transaction, and a homeowner or a tenant, for the performance of a home improvement as defined in Section 7151, that meets the following requirements:

(1) The contract amount is seven hundred fifty dollars (\$750) or less.

(2) The prospective buyer initiated contact with the contractor to request the work.

(3) The contractor does not sell the buyer goods or services beyond those reasonably necessary to take care of the particular problem that caused the buyer to contact the contractor.

(4) No payment is due until the work is completed.

(b) A bona fide service repairperson employed by a licensed contractor or subcontractor hired by a licensed contractor may enter into a service and repair contract on behalf of that contractor.

SEC. 11. Section 7159.11 is added to the Business and Professions Code, to read:

7159.11. This section applies to service and repair contracts as defined in Section 7159.10. A violation of this section by a licensee, or a person subject to be licensed under this chapter, or by his or her agent or salesperson, is cause for discipline.

(a) A service and repair contract and any changes to the contract shall be in writing and signed by the parties.

(b) The writing shall be legible.

(c) Any printed form shall be readable. Unless a larger typeface is specified in this article, the text shall be in at least 10-point typeface and the headings shall be in at least 10-point boldface type.

(d) Before any work is started, the contractor shall give the buyer a copy of the contract signed and dated by the buyer and the contractor. The buyer’s receipt of the copy triggers the buyer’s rights under the Home Solicitation Act, if the right to cancel is applicable, provided that the contract complies with the Home Solicitation Act.

(e) The provisions of this section are not exclusive and do not relieve the contractor from compliance with any other applicable provision of law.



SEC. 12. Section 7159.12 is added to the Business and Professions Code, to read:

7159.12. This section applies to service and repair contracts, as defined in Section 7159.10. Failure by the licensee, or a person subject to be licensed under this chapter, or by his or her agent or salesperson, to provide the following information, notices, and disclosures in the contract is cause for discipline:

(a) The name, business address, and license number of the contractor and the description of the license classification relevant to the project.

(b) The name and registration number of the home improvement salesperson, if any.

(c) A notice concerning commercial general liability insurance. This notice may be provided as an attachment to the contract if the contract includes the statement, "The notice concerning commercial general liability insurance is attached to this contract." The notice shall include the heading "Commercial General Liability Insurance (CGL)" followed by whichever of the following statements is both relevant and correct:

(1) "(The name on the license or 'This contractor') does not carry commercial general liability insurance."

(2) "(The name on the license or 'This contractor') carries commercial general liability insurance written by (the insurance company). You may call the (insurance company) at _____ to check the contractor's insurance coverage."

(3) "(The name on the license or 'This contractor') is self-insured."

(d) A notice concerning workers' compensation insurance. This notice may be provided as an attachment to the contract if the contract includes the statement "A notice concerning workers' compensation insurance is attached to this contract." The notice shall include the heading "Workers' Compensation Insurance" followed by whichever of the following statements is correct:

(1) "(The name on the license or 'This contractor') has no employees and is exempt from workers' compensation requirements."

(2) "(The name on the license or 'This contractor') carries workers' compensation insurance for all employees."

SEC. 13. Section 7159.13 is added to the Business and Professions Code, to read:

7159.13. This section applies to service and repair contracts as defined in Section 7159.10. Failure by the licensee, or a person subject to be licensed under this chapter, or by his or her agent or salesperson, to provide the following information, notices, and disclosures in the contract is cause for discipline:

(a) Notice of the type of contract in at least 10-point boldface type: "Service and Repair."



(b) A notice in at least 12-point boldface type, signed and dated by the buyer: “Notice to the Buyer: The law requires that service and repair contracts must meet all of the following requirements:

(1) The price must be no more than seven hundred and fifty dollars (\$750).

(2) You, the buyer, must have initiated contact with the contractor to request the work.

(3) The contractor must not sell you goods or services beyond those reasonably necessary to take care of the particular problem that caused you to contact the contractor.

(4) No payment is due until the work is completed.”

(c) The notice in at least 12-point boldface type: “Notice to the Buyer: You are entitled to a completely filled in and signed copy of this agreement before any work may be started.”

(d) Where the contract is a fixed contract amount, the heading: “Contract Price” followed by the amount of the contract in dollars and cents.

(e) If a finance charge will be charged, the heading: “Finance Charge” followed by the amount in dollars and cents. The finance charge is to be set out separately from the contract amount.

(f) Where the contract is estimated by a time and materials formula, the heading “Estimated Contract Price” followed by the estimated contract amount in dollars and cents. The contract must disclose the set rate and the estimated cost of materials. The contract must also disclose how time will be computed: for example, in increments of quarter hours, half hours, or hours, and the statement: “The actual contract amount of a time and materials contract may not exceed the estimated contract amount without written authorization from the buyer.”

(g) The heading: “Description of the Project and Materials to be Used and Equipment to be Installed” followed by a description of the project and materials to be used and equipment to be installed.

(h) The heading: “The law requires that the contractor offer you any parts that were replaced during the service call. If you do not want the parts, initial the checkbox labeled ‘OK for contractor to take replaced parts.’ ”

(i) A checkbox labeled “OK for contractor to take replaced parts.”

(j) If a service charge is charged, the heading “Amount of Service Charge” followed by the service charge, and the statement “You may be charged only one service charge, including any trip charge or inspection fee”.

(k) If applicable, the heading “List of documents to be incorporated into the contract,” followed by the list of documents to be incorporated into the contract.



(l) (1) Except when the contract is negotiated at the contractor's place of business, the statement found in paragraph (5) of subdivision (a) of Section 1689.7 of the Civil Code for the right to cancel or the statement found in paragraph (2) of subdivision (e) of Section 1689.7 for the right to cancel, whichever is relevant. A statement that complies with Section 1689.7 may be attached to the contract if the contract includes a checkbox and whichever statement is relevant in at least 12-point boldface type:

(A) "The law requires that the contractor give you a notice explaining your right to cancel. Initial the checkbox if the contractor has given you a 'Notice of Your Right to Cancel.' "

(B) "The law requires that the contractor give you a notice explaining your right to cancel contracts for the repair or restoration of residential premises damaged by a disaster. Initial the checkbox if the contractor has given you a 'Notice of Your Right to Cancel.' "

(2) This subdivision does not apply to home improvement contracts entered into by a person who holds an alarm company operator's license issued pursuant to Chapter 11.6 (commencing with Section 7590), provided the person complies with Sections 1689.5, 1689.6, and 1689.7 of the Civil Code, as applicable.

(m) The signatures of the contractor or the contractor's representative, and the buyer.

(n) The date the contract was signed.

SEC. 14. Section 7159.14 is added to the Business and Professions Code, to read:

7159.14. (a) This section applies to a service and repair contract as defined in Section 7159.10. A violation of this section by a licensee or a person subject to be licensed under this chapter, or by his or her agent or salesperson, is cause for discipline.

(1) The contract may not exceed seven hundred fifty dollars (\$750).

(2) The contract shall state the agreed contract amount, which may be stated as either a fixed contract amount in dollars and cents or, if a time and materials formula is used, as an estimated contract amount in dollars and cents.

(3) The contract amount shall include the entire cost of the contract including profit, labor and materials but excluding finance charges.

(4) The actual contract amount of a time and materials contract may not exceed the estimated contract amount without written authorization from the buyer.

(5) The prospective buyer must have initiated contact with the contractor to request work.



(6) The contractor may not sell the buyer goods or services beyond those reasonably necessary to take care of the particular problem that caused the buyer to contact the contractor.

(7) No payment may be due before the project is completed.

(8) A service and repair contractor may charge only one service charge. For purposes of this chapter, a service charge includes such charges as a service or trip charge, or an inspection fee.

(9) A service and repair contractor charging a service charge must disclose in all advertisements that there is a service charge and, when the customer initiates the call for service, must disclose the amount of the service charge.

(10) The service and repair contractor must offer to the customer any parts that were replaced.

(11) Upon any payment by the buyer, the contractor shall, if requested, obtain and furnish to the buyer a full and unconditional release from any potential lien claimant claim or mechanics' lien pursuant to Section 3114 of the Civil Code for any portion of the work for which payment has been made.

(b) A violation of paragraph (1), (2), (3), (4), (5), (6), or (8) of subdivision (a) by a licensee or a person subject to be licensed under this chapter, or by his or her agent or salesperson, is a misdemeanor punishable by a fine of not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000) or by imprisonment in a county jail not exceeding one year, or by both fine and imprisonment.

(1) An indictment or information against a person who is not licensed but who is required to be licensed under this chapter shall be brought, or a criminal complaint filed, for a violation of this section within four years from the date the buyer signs the contract.

(2) An indictment or information against a person who is licensed under this chapter shall be brought, or a criminal complaint filed, for a violation of this section within two years from the date the buyer signs the contract.

(3) The limitations on actions in this subdivision shall not apply to any administrative action filed against a licensed contractor.

(c) Any person who violates this section as part of a plan or scheme to defraud an owner or tenant of a residential or nonresidential structure, including a mobilehome or manufactured home, in connection with the offer or performance of repairs to the structure for damage caused by a natural disaster, shall be ordered by the court to make full restitution to the victim based on the person's ability to pay, as defined in subdivision (e) of Section 1203.1b of the Penal Code. In addition to full restitution, and imprisonment authorized by this section, the court may impose a fine of not less than five hundred dollars (\$500) nor more than

twenty-five thousand dollars (\$25,000), based upon the defendant's ability to pay. This subdivision applies to natural disasters for which a state of emergency is proclaimed by the Governor pursuant to Section 8625 of the Government Code, or for which an emergency or major disaster is declared by the President of the United States.

SEC. 15. Section 1689.5 of the Civil Code is amended to read:

1689.5. As used in Sections 1689.6 to 1689.11, inclusive, and in Section 1689.14:

(a) "Home solicitation contract or offer" means any contract, whether single or multiple, or any offer which is subject to approval, for the sale, lease, or rental of goods or services or both, made at other than appropriate trade premises in an amount of twenty-five dollars (\$25) or more, including any interest or service charges. "Home solicitation contract" does not include any contract under which the buyer has the right to rescind pursuant to Title 1, Chapter 2, Section 125 of the Federal Consumer Credit Protection Act (P.L. 90-321) and the regulations promulgated pursuant thereto.

(b) "Appropriate trade premises," means premises where either the owner or seller normally carries on a business, or where goods are normally offered or exposed for sale in the course of a business carried on at those premises.

(c) "Goods" means tangible chattels bought for use primarily for personal, family, or household purposes, including certificates or coupons exchangeable for these goods, and including goods that, at the time of the sale or subsequently, are to be so affixed to real property as to become a part of the real property whether or not severable therefrom, but does not include any vehicle required to be registered under the Vehicle Code, nor any goods sold with this vehicle if sold under a contract governed by Section 2982, and does not include any mobilehome, as defined in Section 18008 of the Health and Safety Code, nor any goods sold with this mobilehome if either are sold under a contract subject to Section 18036.5 of the Health and Safety Code.

(d) "Services" means work, labor and services, including, but not limited to, services furnished in connection with the repair, restoration, alteration, or improvement of residential premises, or services furnished in connection with the sale or repair of goods as defined in Section 1802.1, and courses of instruction, regardless of the purpose for which they are taken, but does not include the services of attorneys, real estate brokers and salesmen, securities dealers or investment counselors, physicians, optometrists, or dentists, nor financial services offered by banks, savings institutions, credit unions, industrial loan companies, personal property brokers, consumer finance lenders, or commercial finance lenders, organized pursuant to state or federal law, that are not



connected with the sale of goods or services, as defined herein, nor the sale of insurance that is not connected with the sale of goods or services as defined herein, nor services in connection with the sale or installation of mobilehomes or of goods sold with a mobilehome if either are sold or installed under a contract subject to Section 18036.5 of the Health and Safety Code, nor services for which the tariffs, rates, charges, costs, or expenses, including in each instance the time sale price, is required by law to be filed with and approved by the federal government or any official, department, division, commission, or agency of the United States or of the state.

(e) “Business day” means any calendar day except Sunday, or the following business holidays: New Year’s Day, Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, and Christmas Day.

SEC. 16. Section 1689.6 of the Civil Code is amended to read:

1689.6. (a) (1) Except for a contract written pursuant to Section 7151.2 or 7159.10 of the Business and Professions Code, in addition to any other right to revoke an offer, the buyer has the right to cancel a home solicitation contract or offer until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase which complies with Section 1689.7.

(2) In addition to any other right to revoke an offer, the buyer has the right to cancel a home solicitation contract written pursuant to Section 7151.2 of the Business and Professions Code until midnight of the third business day after the buyer receives a signed and dated copy of the contract or offer to purchase that complies with Section 1689.7 of this code.

(3) In addition to any other right to revoke an offer, the buyer has the right to cancel a home solicitation contract or offer to purchase written pursuant to Section 7159.10 of the Business and Professions Code, until the buyer receives a signed and dated copy of a service and repair contract that complies with Section 1689.7 of this code and meets the contract requirements found in Section 7159.10 of the Business and Professions Code and the work commences.

(b) In addition to any other right to revoke an offer, any buyer has the right to cancel a home solicitation contract or offer for the purchase of a personal emergency response unit until midnight of the seventh business day after the day on which the buyer signs an agreement or offer to purchase which complies with Section 1689.7. This subdivision shall not apply to a personal emergency response unit installed with, and as part of, a home security alarm system subject to the Alarm Company Act (Chapter 11.6 (commencing with Section 7590) of Division 3 of the Business and Professions Code) which has two or more stationary



protective devices used to enunciate an intrusion or fire and is installed by an alarm company operator operating under a current license issued pursuant to the Alarm Company Act, which shall instead be subject to subdivision (a).

(c) In addition to any other right to revoke an offer, a buyer has the right to cancel a home solicitation contract or offer for the repair or restoration of residential premises damaged by a disaster that was not void pursuant to Section 1689.14, until midnight of the seventh business day after the buyer signs and dates the contract.

(d) Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address specified in the agreement or offer.

(e) Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid.

(f) Notice of cancellation given by the buyer need not take the particular form as provided with the contract or offer to purchase and, however expressed, is effective if it indicates the intention of the buyer not to be bound by the home solicitation contract or offer.

(g) “Personal emergency response unit,” for purposes of this section, means an in-home radio transmitter device or two-way radio device generally, but not exclusively, worn on a neckchain, wrist strap, or clipped to clothing, and connected to a telephone line through which a monitoring station is alerted of an emergency and emergency assistance is summoned.

SEC. 17. Section 1689.7 of the Civil Code is amended to read:

1689.7. (a) (1) Except for contracts written pursuant to Sections 7151.2 and 7159.10 of the Business and Professions Code, in a home solicitation contract or offer, the buyer’s agreement or offer to purchase shall be written in the same language, e.g., Spanish, as principally used in the oral sales presentation, shall be dated, shall be signed by the buyer, and except as provided in paragraph (2), shall contain in immediate proximity to the space reserved for his or her signature a conspicuous statement in a size equal to at least 10-point boldface type, as follows: “You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right.”

(2) The statement required pursuant to this subdivision for a home solicitation contract or offer for the purchase of a personal emergency response unit, as defined in Section 1689.6, which is not installed with and as part of a home security alarm system subject to the Alarm Company Act (Chapter 11.6 (commencing with Section 7590) of Division 3 of the Business and Professions Code) which has two or more stationary protective devices used to enunciate an intrusion or fire and



is installed by an alarm company operator operating under a current license issued pursuant to the Alarm Company Act, is as follows: “You, the buyer, may cancel this transaction at any time prior to midnight of the seventh business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right.”

(3) Except for contracts written pursuant to Sections 7151.2 and 7159.10 of the Business and Professions Code, the statement required pursuant to this subdivision for the repair or restoration of residential premises damaged by a disaster pursuant to subdivision (c) of Section 1689.6 is as follows: “You, the buyer, may cancel this transaction at any time prior to midnight of the seventh business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right.”

(4) A home solicitation contract written pursuant to Section 7151.2 of the Business and Professions Code shall be written in the same language, e.g., Spanish, as principally used in the oral sales presentation. The contract, or an attachment to the contract that complies with subdivision (l) of Section 7159.4 of the Business and Professions Code shall include in immediate proximity to the space reserved for his or her signature, the following statement in a size equal to at least 12-point boldface type, which shall be dated and signed by the buyer:

“Three-Day Right to Cancel

You, the buyer, have the right to cancel this contract within three business days. You may cancel by e-mailing, mailing, faxing, or delivering a written notice to the contractor at the contractor’s place of business by midnight of the third business day after you received a signed and dated copy of the contract that includes this notice. Include your name, your address, and the date you received the signed copy of the contract and this notice.

If you cancel, the contractor must return to you anything you paid within 10 days of receiving the notice of cancellation. For your part, you must make available to the contractor at your residence, in substantially as good condition as you received it, any goods delivered to you under this contract or sale. Or, you may, if you wish, comply with the contractor’s instructions on how to return the goods at the contractor’s expense and risk. If you do make the goods available to the contractor and the contractor does not pick them up within 20 days of the date of your notice of cancellation, you may keep them without any further obligation. If you fail to make the goods available to the contractor, or if you agree to return the goods to the contractor and fail to do so, then



you remain liable for performance of all obligations under the contract.”

(5) A home solicitation contract written pursuant to Section 7159.10 of the Business and Professions Code shall be written in the same language, e.g., Spanish, as principally used in the oral sales presentation. The contract, or an attachment to the contract that complies with subdivision (k) of Section 7159.13 of the Business and Professions Code shall include, in immediate proximity to the space reserved for his or her signature, the following statement in a size equal at least to 12-point boldface type, which shall be dated and signed by the buyer:

“YOUR RIGHTS TO CANCEL BEFORE WORK BEGINS

You, the buyer, have the right to cancel this contract until:

1. You receive a copy of this contract signed and dated by you and the contractor; and
2. The contractor starts work.

However, even if the work has begun you, the buyer, may still cancel the contract within three business days if the contract price is more than seven hundred fifty dollars (\$750), or if you, did not initiate the contact with the contractor to request the work, or if the contractor sold you goods or services beyond those reasonably necessary to take care of the particular problem that caused you to contact the contractor, or if the payment was due before the work was complete.

If any of these reasons for canceling occurred, you may cancel the contract by e-mailing, mailing, faxing, or delivering a written notice to the contractor at the contractor’s place of business within three business days of the date you received a signed and dated copy of this contract. Include your name, your address, and the date you received a signed copy of the contract and this notice.

If you cancel, the contractor must return to you anything you paid within 10 days of receiving the notice of cancellation. For your part, you must make available to the contractor at your residence, in substantially as good condition as you received it, any goods delivered to you under this contract or sale. Or, you may, if you wish, comply with the contractor’s instructions on how to return the goods at the contractor’s expense and risk. If you do make the goods available to the contractor and the contractor does not pick them up within 20 days of the date of your notice of cancellation, you may keep them without any further obligation. If you fail to make the goods available to the contractor, or if you agree to return the goods to the contractor and fail to do so, then you remain liable for performance of all obligations under the contract.”



(b) The agreement or offer to purchase shall contain on the first page, in a type size no smaller than that generally used in the body of the document, the following: (1) the name and address of the seller to which the notice is to be mailed, and (2) the date the buyer signed the agreement or offer to purchase.

(c) Except as provided in subdivision (d), the agreement or offer to purchase shall be accompanied by a completed form in duplicate, captioned “Notice of Cancellation” which shall be attached to the agreement or offer to purchase and be easily detachable, and which shall contain in type of at least 10-point the following statement written in the same language, e.g., Spanish, as used in the contract:

“Notice of Cancellation”

/enter date of transaction/

(Date)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller’s expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram

to _____,
/name of seller/

at _____
/address of seller’s place of business/

not later than midnight of _____.

(Date)

I hereby cancel this transaction.

(Date)

(Buyer's signature)

(d) Any agreement or offer to purchase a personal emergency response unit, as defined in Section 1689.6, which is not installed with and as part of a home security alarm system subject to the Alarm Company Act which has two or more stationary protective devices used to enunciate an intrusion or fire and is installed by an alarm company operator operating under a current license issued pursuant to the Alarm Company Act, shall be subject to the requirements of subdivision (c), and shall be accompanied by the "Notice of Cancellation" required by subdivision (c), except that the first paragraph of that notice shall be deleted and replaced with the following paragraph:

You may cancel this transaction, without any penalty or obligation, within seven business days from the above date.

(e) (1) Except for contracts written pursuant to Sections 7151.2 and 7159.10 of the Business and Professions Code, any agreement or offer to purchase services for the repair or restoration of residential premises damaged by a disaster that is subject to subdivision (c) of Section 1689.6, shall be subject to the requirements of subdivision (c) of this section, and shall be accompanied by the "Notice of Cancellation" required by subdivision (c) of this section, except that the first paragraph of that notice shall be deleted and replaced with the following paragraph:

You may cancel this transaction, without any penalty or obligation, within seven business days from the above date.

(2) A home solicitation contract written pursuant to Section 7151.2 of the Business and Professions Code for the repair or restoration of residential premises damaged by a disaster that is subject to subdivision (c) of Section 1689.6, shall be written in the same language, e.g. Spanish, as principally used in the oral sales presentation. The contract, or an attachment to the contract that complies with subdivision (l) of Section 7159.4 of the Business and Professions Code shall include, in immediate proximity to the space reserved for his or her signature, the following statement in a size equal to at least 12-point boldface type, which shall be signed and dated by the buyer:



“Seven-Day Right to Cancel

You, the buyer, have the right to cancel this contract within seven business days. You may cancel by e-mailing, mailing, faxing, or delivering a written notice to the contractor at the contractor’s place of business by midnight of the seventh business day after you received a signed and dated copy of the contract that includes this notice. Include your name, your address, and the date you received the signed copy of the contract and this notice.

If you cancel, the contractor must return to you anything you paid within 10 days of receiving the notice of cancellation. For your part, you must make available to the contractor at your residence, in substantially as good condition as you received it, any goods delivered to you under this contract or sale. Or, you may, if you wish, comply with the contractor’s instructions on how to return the goods at the contractor’s expense and risk. If you do make the goods available to the contractor and the contractor does not pick them up within 20 days of the date of your notice of cancellation, you may keep them without any further obligation. If you fail to make the goods available to the contractor, or if you agree to return the goods to the contractor and fail to do so, then you remain liable for performance of all obligations under the contract.”

(3) A home solicitation contract written pursuant to Section 7159.10 of the Business and Professions Code for the repair or restoration of residential premises damaged by a disaster that is subject to subdivision (c) of Section 1689.6, be written in the same language, e.g. Spanish, as principally used in the oral sales presentation. The contract, or an attachment to the contract that complies with subdivision (k) of Section 7159.4 of the Business and Professions Code shall include, in immediate proximity to the space reserved for his or her signature, the following statement in a size equal to at least 12-point boldface type, which shall be signed and dated by the buyer:

“YOUR RIGHTS TO CANCEL BEFORE WORK BEGINS

You, the buyer, have the right to cancel until both of the following events have occurred:

1. You receive a copy of this contract, signed and dated by you and the contractor; and
2. The contractor starts work.

However, even if the work has begun, you, the buyer, may still cancel the contract within seven business days if the contract price is more than seven hundred fifty dollars (\$750), or if you did not initiate the contact



with the contractor to request the work, or if the contractor sold you goods or services beyond those reasonably necessary to take care of the particular problem that caused you to contact the contractor, or if the payment was due before the work was complete.

If any of these reasons for canceling occurred, you may cancel the contract by e-mailing, mailing, faxing, or delivering a written notice to the contractor at the contractor's place of business within seven business days of the date you received a signed and dated copy of the contract that includes this notice. Include your name, your address, and the date you received a signed copy of the contract and this notice.

(f) The seller shall provide the buyer with a copy of the contract or offer to purchase and the attached notice of cancellation, and shall inform the buyer orally of his or her right to cancel and the requirement that cancellation be in writing, at the time the home solicitation contract or offer is executed.

(g) Until the seller has complied with this section the buyer may cancel the home solicitation contract or offer.

(h) "Contract or sale" as used in subdivision (c) means "home solicitation contract or offer" as defined by Section 1689.5.

SEC. 18. Section 1689.13 of the Civil Code is repealed.

SEC. 19. Section 1689.13 is added to the Civil Code, to read:

1689.13. Sections 1689.5, 1689.6, 1689.7, 1689.10, 1689.12, and 1689.14 do not apply to a contract that meets all of the following requirements:

(a) The contract is initiated by the buyer or his or her agent or insurance representative.

(b) The contract is executed in connection with making of emergency or immediately necessary repairs that are necessary for the immediate protection of persons or real or personal property.

(c) The buyer gives the seller a separate statement that is dated and signed that describes the situation that requires immediate remedy, and expressly acknowledges and waives the right to cancel the sale within three or seven business days, whichever applies.

SEC. 20. Section 1689.15 is added to the Civil Code, to read:

1689.15. Notwithstanding any other provision of law, a contractor who is duly licensed pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code may commence work on a service and repair project as soon as the buyer receives a signed and dated copy of a service and repair contract that meets the contract requirements found in Section 7159.10 of the Business and Professions Code. The buyer retains any right of cancellation applicable to home solicitations under Sections 1689.5 to 1689.14, inclusive, until such time as the buyer receives a signed and



dated copy of a service and repair contract that meets the contract requirements found in Section 7159.10 of the Business and Professions Code and complies with Section 1689.7, and the licensee in fact commences that project, at which time the buyer is deemed to have waived, and has waived, any cancellation right provided in Sections 1689.5 to 1689.14, inclusive.

SEC. 21. This act shall become operative on July 1, 2005.

SEC. 22. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

